Minister for Community Services
Minister for Youth

MIU 05/61914A

Mr James Catchpole
Committee Secretary
Standing Committee on Family and Human Services
House of Representatives
Parliament House
CANBERRA NSW 2600

SUBMISSION NO. 175
AUTHORISED: 1-06-05

Dear Mr Catchpole

I refer to the Inquiry of the Standing Committee on Family and Human Services into Adoption of Children from Overseas.

Please find attached the submission of the New South Wales Government.

If there are any questions regarding the submission, the contact officer is Ms Megan Mitchell, Executive Director, Out-of-Home Care, Department of Community Services, who is available on 9716 2244.

Yours sincerely

STANDING COMMITTEE
17 MAY 2005
on Family and Human Services

Reba Meagher MP
Minister

04 MAY 2005

Governor Macquarie Tower
1 Farrer Place
Sydney NSW 2000

Phone: 02 9228 3555
Fax: 02 9228 3585
E-mail: reba.office@meagher.minister.nsw.gov.au

House of Representatives
Standing Committee on Family and Human Services
Inquiry into Adoption of Children from Overseas

SUBMISSION OF THE NEW SOUTH WALES GOVERNMENT

Overview

A formal intercountry adoption program was initially commenced as a part of a humanitarian response to the children of countries afflicted by war, poverty and social and political disruption. In this context, intercountry adoption advocates argue that adopting children from developing countries is like a form of overseas aid and for this reason should be encouraged and supported by governments. Government involvement is also justified in terms of the immigration issues involved and to ensure that intercountry adoption is not a vehicle for undermining border security or for exploiting vulnerable children and families.

The emergence of an international agreement to regulate the practice of intercountry adoption has also necessitated formal government action. The system of intercountry adoption has become a highly formalised system, operating under an International Convention and involving a complex network of bilateral agreements under that convention.

It is timely to examine the effectiveness and efficiency of this system and to re-examine whether the spread of roles and responsibilities within it are appropriate.

While overseas aid, immigration and the entering into and implementation of international agreements are all traditional areas of Commonwealth responsibility, States and Territories are overwhelmingly bearing the burden of intercountry adoption without any funding assistance from the Commonwealth.

The 1998 Commonwealth/State Agreement on intercountry adoption theoretically establishes a cooperative scheme for the administration of intercountry adoption programs under the Hague Convention. Over time, States and Territories have informally inherited functions that it was initially understood would be performed by the Commonwealth. The negotiation of bilateral agreements (under which intercountry adoption programs operate) with particular countries is one such area. This issue raises more than the question of cost shifting, which is obviously an issue in its own right given that the functions that are performed by the States and Territories are unfunded. It also raises the problem that bilateral agreements differ from one another, as there are inconsistent approaches adopted in negotiations and a tendency to solve the issues agreement by agreement rather than through coherent national policies. Fundamental aspects such as the age limits on adoptive parents and the processes for lodging applications differ depending on the country from which an adoption is to occur. This obviously leads to administrative confusion and complexity for program administrators at state level, but equally importantly it leads to difficulties for adoptive parents in understanding the varying requirements and obligations. There is also a consequent upward pressure on the costs of intercountry adoption.

The NSW position is that it would be more appropriate and efficient for the Commonwealth to assume responsibility for management of the intercountry adoption program. There would be better outcomes for adoptive parents, a more coherent approach to negotiation of bilateral agreements and an ability for child protection agencies to focus on child welfare issues to the extent that they arise. Alternatively, and at a minimum, the Commonwealth/State Agreement must be reviewed to ensure that it provides a more effective framework for ordering and resourcing intercountry adoption functions in Australia.

Intercountry adoption in New South Wales

The *Adoption Act 2000 (NSW)* makes clear that the best interests of the child concerned must be the paramount consideration in adoption law and practice. The Act emphasises that adoption is to be regarded as a service for the child concerned, not for adults wishing to acquire the care of the child.

Intercountry adoptions raise many of the same issues as domestic adoptions (eg training and assessment of applicants, allocation and placement of children and post adoption support and supervision). However, they also present substantial additional administrative and casework complexities that do not arise with the adoption of local children and which require specialised skill and additional funding.

As a provider of intercountry adoption services, the NSW Government must ensure that its policies and practices satisfy Australia's obligations under the *Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption*. It must also ensure compliance with the laws and policies of overseas countries seeking families for their children. Additionally, NSW must work with the Commonwealth Department of Immigration and Multicultural and Indigenous Affairs so that it can be satisfied that the overseas adoption is genuine and meets immigration requirements.

The NSW Government also has responsibilities in its capacity as a State Central Authority designated under the *Family Law (Hague Convention on Intercountry Adoption) Regulations 1998*. *The Commonwealth-State Agreement for the Implementation of the Hague Convention* provides that the functions of a State Central Authority primarily relate to:

- day-to-day casework involved in particular adoptions;
- approving an application for the adoption of a child;
- giving consent to the adoption of a child;
- accrediting intercountry adoption service providers; and
- advising the Commonwealth where obligations under the Hague Convention are not being observed and where the preparation of legislation may be required.

In 2003/04 intercountry adoptions accounted for more than three quarters of all adoptions in NSW and conservatively cost the Department of Community Services around $1.5m.

The Agreement provides that the functions of a State Central Authority do not include any functions of the Commonwealth Central Authority (the Attorney General's Department) under the *Family Law (Hague Convention on Intercountry Adoption) Regulations 1998 ("the Regulations").* The Regulations provide that the functions of the Central Authority include "cooperating with Central Authorities outside Australia on matters relating to the administration and implementation of the Convention".

However, due to inadequate resourcing and leadership from the Commonwealth Central Authority, States and Territories have been asked to assume responsibility for establishing, administering and implementing all intercountry adoption programs under bilateral agreements. NSW has responsibility for relations with Bolivia, Chile, Colombia, Costa Rica, Korea and Taiwan. As well as the administrative costs of supporting these programs, there are substantial travel and translation costs. Overseas Central Authorities regard visits from a receiving country as an important indicator of that country's commitment to their children. Personal visits are also essential for resolving policy issues arising under the program on behalf of other States and Territories.

As an example of the sorts of responsibilities and costs that arise in this context, NSW is currently leading bilateral negotiations to establish a program with Bolivia, a signatory to the Hague Convention. To date, some of the costs associated with this exercise to date include $10,000 in translating documents and $20,000 in travel and accommodation expenses. NSW was also recently responsible for establishing an adoption program with Chile. On average, costs to NSW of establishing each intercountry adoption program would be in the vicinity of $35,000 to $50,000. Supporting each established intercountry adoption program also incurs ongoing costs for travel and interpreter services.

In addition to international liaison, Commonwealth, State and Territory Central Authorities hold two day meetings twice yearly to discuss policy and practice issues relating to intercountry adoption (at an average cost of $5,000 per year per jurisdiction). NSW also meets four times each year with intercountry adoption support organisations to discuss emerging issues and share program information.

There are no arrangements in place with the Commonwealth for sharing costs associated with the establishment and maintenance of intercountry adoption programs.

Moreover, the practice of separate States leading bilateral negotiations has inevitably contributed to inconsistencies in how programs with different countries operate and the different expectations and requirements that apply to applicants. Under bilateral agreements, some countries only receive applications once a year, others at regular intervals on a batching basis while others do not impose batching requirements. The approach adopted will obviously create significant difference in the total time for the process. If an application misses the annual cut off date there will plainly be a greater time for the process. Other differences relate to the age limits for applicants. Different Agreements seem to provide different arrangements for both the maximum age and at what point that age limit is applied in the process. It is plainly important for the applicant to determine whether they can be under the age limit at the time they apply or whether there needs to be certainty that they will remain under the age limit at the projected point of the adoption (given that these adoptions have historically taken up to a number of years).

Reforms to intercountry adoption in NSW

Up until recently, fees for intercountry adoption in NSW had remained fixed at a small fraction of the cost of finalising an intercountry adoption. At the same time the costs to the Department of Community Services of managing intercountry adoptions have been increasing over the last decade. Cost drivers have included fees of contracted adoption assessors, training costs and necessary investments to streamline application and assessment processes in order to reduce waiting times for applicants. In the absence of Federal Government assistance, a number of other States and Territories (including NSW) have been left with no choice but to increase fees to recover more of the costs associated with the program. In NSW, a new cost-recovery pricing structure took effect on 1 July 2004.

In parallel, NSW has moved to improve the efficiency of its own internal administrative processes to seek to offset the inherent inefficiencies in the national system. The Department of Community Services has implemented the following strategies:

- removing the potential for duplication in assessment work by the Department and contracted adoption assessors;
- extending the length of time that can elapse before an existing application needs to be updated;
- streamlining the handling of payments to third parties;
- improvements to the administrative processing of an application;
- improved communication with clients throughout the process; and
- reducing training requirements for second and subsequent adoptions.

Revenue raised from the new fee structure continues to fall well short of total cost recovery as the new costing policy includes a hardship policy for applicants with lower incomes. The hardship policy offers fee relief to applicants with household incomes comparable to the lower half of all Australian households.

It is also important to note that the new cost-recovery fee is based on direct service delivery costs only. It does not seek to recover full costs associated with the Department's functions as State Central Authority or corporate overheads such as strategic management, governance, accountancy, audit, insurance or bank charges and fees.

The NSW Government is also working towards the establishment of an accreditation system for intercountry adoption service providers. This will allow the involvement of non-government organisations in the delivery of intercountry adoption services, to provide applicants with a much wider choice of service providers (noting that the Department of Community Services is currently the only service provider) whilst ensuring the maintenance of adequate standards and maximum protection for children. It is noted that the Intergovernmental Agreement prescribes the necessary elements of any system to accredit intercountry adoption service providers, and the accreditation system is designed to assist adoptive parents, although the Commonwealth has offered no financial assistance to States and Territories to establish and administer such an accreditation system.

Options for the Future

Consolidating all functions associated with negotiating and maintaining intercountry adoptions programs under the Hague Convention and bringing children into Australia under these programs within the Commonwealth jurisdiction should be seriously considered. It is through this step that the current patchwork of arrangements could be addressed and those seeking to adopt children from overseas could receive more consistent and efficient services.

Alternatively and at a minimum, the Commonwealth/State Agreement on intercountry adoption should be reviewed and renegotiated, in order to achieve a fair and equitable cost sharing arrangement between the Commonwealth and States and Territories. The Commonwealth Central Authority should also be required to adequately resource and fulfil its obligations under the Agreement and relevant Commonwealth laws.